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Applicant: Mark D. Scott et al. Examiner: R. Hayes
Serial No. 09/323,765 Group Art Unit: 1647
Filed: June 1, 1999 Docket No. 259.006US1
Title: ANTIGENIC MODULATION OF CELLS

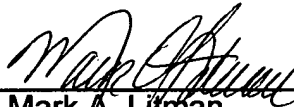
Assistant Commissioner for Patents
Washington, D.C. 20231

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The following documents are being submitted:

- ☒ Response to Second Restriction Requirement
- ☒ Transmittal Sheet
- ☒ Return postcard

MARK A. LITMAN & ASSOCIATES, P.A.
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By: 
Atty: Mark A. Litman
Reg. No. 26,390

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on January 10, 2001.

Mark A. Litman
Name


Signature

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RESPONSE TO SECOND RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

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JAN 16 2001
PATENT & TRADEMARK OFFICE

ELECTION OF CLAIMS FOR EXAMINATION

Applicant(s) respectfully elects, with traverse, the subject matter of the claims of Group I (now redefined as Claims 1-26, 28 and 31) drawn to non-immunogenic compositions, as well as methods of producing such compositions, classified in claims 424, subclass 93.7.

TRAVERSAL OF RESTRICTION

Although the two sets of claims are classified in different subclasses, the subclasses are not only within the same class (424), they are not only within the same generic subclass (424, 93), but also they are classified in related breakdowns of the same subclass (93.1 and 93.7). The scope of the claims is identical with regard to the compositions recited in Group I, with those identical compositions recited in the performance of the process of Group II.

The assertion that the methods of a) decreasing phagocytosis, b) rejection of cells or tissue, or c) decreasing aggregation within a subject require physically and functionally distinct elements is clearly in error. The same compositions of Group I effect those results, which are also, in fact, generically related within the process of rejection of cells and tissue. Phagocytosis is the absorption or incorporation of cells (including by white blood cells) to remove them from a patient that is a method within the process of

avoiding rejection of cells or tissue. The decreasing of aggregation is also a method included within the generic process of avoiding rejection of cells or tissue. Therefore there is no difference in 'elements' (the composition) required to practice these 'different' methods. The compositions recited in the claims of Group I perform these functions, all within the generic process of avoiding rejection of cells or tissue.

As Applicants have established by these facts and statements that the **sole underlying basis for the restriction requirement is in error**, the restriction requirement must be withdrawn, and all claims examined on the merits.

Authorization is hereby given to charge any additional fees or credit any overpayments that may be deemed necessary to Deposit Account Number 50-1391.

Respectfully submitted,

MARK D. SCOTT et al.

By their Representatives,

MARK A. LITMAN & ASSOCIATES, P.A.
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Date: January 10, 2001

By: 
Mark A. Litman
Reg. No. 26,390

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